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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 THE CITY AND COUNTY OF SAN  
15 FRANCISCO, CALIFORNIA and THE  
PEOPLE OF THE STATE OF  
16 CALIFORNIA, Acting by and through San  
Francisco City Attorney DAVID CHIU,

17 Plaintiffs,

18 v.

19 PURDUE PHARMA L.P., et al.

20 Defendants.  
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Case No. 3:18-cv-07591-CRB-JSC

**JOINT STATUS UPDATE**

**Judges:** Hon. Charles R. Breyer and Jacqueline  
Scott Corley

**Courtroom:** Via Videoconference

**Hearing Date:** January 7, 2022

**Hearing Time:** 8:30 a.m.

The parties respectfully submit this Joint Status Update in advance of the Court's discovery conference scheduled for January 7, 2022, at 8:30 a.m.

### **JOINT STATEMENT REGARDING SCHEDULE AND DISPUTE RESOLUTION**

The parties jointly report on a number of case developments that have taken place since the last conference with the Court.

#### **I. Case Schedule**

On June 15, the Court entered the Parties' Joint Stipulation and Amended Order to Modify Case Schedule. Doc. 572. The specific dates are reflected in the chart below:

<b>Event</b>	<b>Current Schedule</b>
Custodial Productions Substantial Completion Deadline	June 4, 2021
Document Production Substantial Completion Deadline	June 21, 2021
Plaintiff's Expert Reports	October 5, 2021
Plaintiff's Endo- and Walgreens-Related Expert Reports	October 19, 2021
Close of Fact Discovery	November 12, 2021
Defendants' Expert Reports	December 2, 2021
Walgreens' two responsive reports for Drs. Park and McCann	December 9, 2021
Plaintiff's Expert Rebuttal Reports	December 23, 2021
Close of Expert Discovery	January 14, 2022
Rebuttal Reports for Experts Park and Catizone	January 21, 2022
Motions for Summary Judgment and <i>Daubert</i> Motions	January 24, 2022
<i>Daubert</i> Motions related to Park and Catizone	February 7, 2022
Oppositions to Motions for Summary Judgment and <i>Daubert</i> Motions	February 25, 2022
Oppositions to <i>Daubert</i> Motions for Park and Catizone	March 9, 2022
Replies in Support of Motions for Summary Judgment and <i>Daubert</i> Motions	March 11, 2022
Replies in support of <i>Daubert</i> Motions for Park and Catizone	March 21, 2022
All Trial Materials Due	March 24, 2022
Final Pretrial Conference	April 4, 2022
Trial	April 25, 2022

1 **II. Update on Status of Settlement Among Stipulating Parties**

2 On January 26, 2021, the Court stayed the proceedings as to the Stipulating Defendants.<sup>1</sup>  
 3 The Stipulating Parties will submit a further update to the Court on January 7, 2022. Doc. 670.

4 **III. Discovery Orders Issued Since Prior Conference**

5 The Court issued four orders since the last hearing. In the first order immediately  
 6 following the last hearing, the Court resolved a number of disputes regarding the scheduling of  
 7 expert depositions and addressed several other issues raised in the preceding status report. Doc.  
 8 856. In the second order, the Court resolved Plaintiff's motion to compel Anda's further  
 9 responses to Plaintiff's third set of interrogatories. Doc. 863. In the third order, pursuant to  
 10 stipulation between Plaintiff and Walgreens, the Court ordered Walgreens to promptly identify a  
 11 new date for the inspection of its pharmacy computer systems. Doc. 873. And, in the fourth order,  
 12 the Court granted Walgreens' motion to compel the California Department of Justice to identify  
 13 certain prescribers in the CURES database. Doc. 880.

14 **IV. Discovery Motions**

15 There are no fully briefed discovery disputes pending before the Court.

16 **V. Other Pending Motions**

17 On December 22, the non-stayed manufacturer Defendants filed a motion to stay the case  
 18 against them. Doc. 868. Pursuant to the parties' stipulated schedule, the briefing will conclude on  
 19 February 7, and the matter is set for a hearing before Judge Breyer on February 24, 2022. Doc.  
 20 886.<sup>2</sup>

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 25 <sup>1</sup> The Stipulating Defendants are distributors McKesson Corporation, AmerisourceBergen Drug  
 26 Corporation, and Cardinal Health, Inc.; and manufacturer Johnson & Johnson, its subsidiary  
 27 Janssen Pharmaceuticals Inc. f/k/a Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen  
 28 Pharmaceutica, Inc. and its former affiliate Noramco, Inc. (with Plaintiff, the "Stipulating  
 Parties").

<sup>2</sup> On January 3, Walgreens informed Plaintiff that it, too, intended to file another motion to stay  
 the case, and asked Plaintiff's consent to have the motion heard on the same date as the  
 manufacturer-Defendants' motion. The parties are attempting to negotiate an appropriate briefing  
 schedule under the circumstances.

**PLAINTIFF'S STATEMENT**

**I. Request for Status Conference on Pre-Trial Deadlines and Logistics**

As of now, the case schedule is silent on certain pre-trial deadlines—including, for example, a schedule for motions *in limine*—that will likely be fast approaching. Plaintiff will be initiating discussion with the Defendants about these topics and suggests the Court set a deadline for the Parties to submit proposals on these deadlines and other trial-related logistics.

**II. Defendants' Discovery Deficiencies**

Plaintiff addresses a few of Defendants' discovery deficiencies below.

**A. Walgreens**

**1. Inspection of Walgreens' Pharmacy Software System**

This is, unfortunately, the third time Plaintiff has been forced to raise this issue with the Court. At the last hearing, the Court ordered Walgreens to allow the inspection (again), first with a test system based on its counsel's representation that there would be "no material differences" from the live system. 12/20/21 Hr'g Tr. at 21:21-23; *see also* 12/16/21 email (representing that the test system would allow Plaintiff to "inspect every aspect of Walgreens' system," including "prescription history"). The Court further ordered that, given Walgreens' last-minute cancellation of the original December 15 inspection, the rescheduled inspection would be "going forward on Wednesday," December 22, and "shall not be cancelled." 12/20/21 Hr'g Tr. at 23:13-14.

There have been two significant developments since then. First, notwithstanding the Court's clear direction, Walgreens again cancelled the inspection the evening before it was scheduled to occur. Doc. 873. Despite its commitment to "promptly identify a new date for the inspection that works for both parties" (*id.*), Walgreens provided no dates until January 5, immediately before the status report was to be exchanged, and the only date it offered was January 20, nearly a month after the second inspection it cancelled. Plaintiff asked Walgreens to proceed on January 12, a date when its experts are available. Walgreens has not responded. Equally as troubling, after the last hearing, Walgreens told Plaintiff that it could *not* enter prescriptions with a date earlier than the present, meaning it could not create a meaningful "prescription history," one of the key elements of the system that Walgreens represented it could

1 replicate. Plaintiff raised this issue with Walgreens multiple times, and Walgreens has not offered  
 2 a solution. During the meet and confer, Plaintiff asked Walgreens' counsel if they disputed this  
 3 characterization or had any substantive response regarding the effect of their inability to recreate  
 4 an accurate "prescription history" interface. They had no response. The response they provided  
 5 the next day, in the near-final version of the status report, misses the mark. The parties'  
 6 agreement to use test data was based on representations that prescriptions could be "backdated" to  
 7 create a working prescription history. Entering the prescriptions a week in advance will not solve  
 8 the problem because the prescriptions will not be spaced out over time, and thus, Plaintiff will not  
 9 be able to explore, for example, time-related alerts and drug interaction alerts.

## 10 **2. Employee Disputes**

### 11 ***Walgreens' Incomplete Log***

12 On December 2, the Court issued an order compelling Walgreens to produce "a log of  
 13 employee legal disputes documenting claims that Walgreens took adverse employment actions  
 14 against pharmacists relating to their prescription due diligence." Doc. 796. Walgreens' log  
 15 contained just six barebones entries covering 2017 to present and omitted clearly relevant cases  
 16 Plaintiff identified from its own research both before and after 2017. *See* Doc. 851 at 5. The log  
 17 also did not include a number of data fields Plaintiff had requested in its briefing to the Court. On  
 18 December 20, upon Plaintiff's request, the Court ordered Walgreens to make an in-house counsel  
 19 employee "knowledgeable about the employee dispute log is prepared and maintained" available  
 20 for a meet and confer. Doc. 856 at 3.

21 That meeting occurred on January 4 and confirmed that Walgreens had not made a  
 22 diligent effort to comply with the Court's order. The in-house attorney stated that employee legal  
 23 disputes are cataloged in a legal management database that has been in use since 2014 (and  
 24 Walgreens later confirmed contains data back to 2010). He explained that the log Walgreens  
 25 produced was limited to matters tagged to a designation called "Rx P Claim," a designation he  
 26 described as "used occasionally" since 2017 and inputted on an "ad hoc" basis by a non-lawyer  
 27 "coordinator" at intake. The in-house attorney said that if he were compiling a log compliant with  
 28 the Court's order, he would review the narrative text field for all matters cataloged under certain

1 categories like “Wrongful Discharge” and “Retaliation.” He also identified a number of other  
 2 potentially relevant categories and explained that claims brought by unionized San Francisco  
 3 pharmacists likely would be cataloged under “Labor Relations.” Walgreens apparently conducted  
 4 no review of matters designated under any of these categories, notwithstanding the Court’s  
 5 December orders.

6 Following the meeting, Plaintiff asked Walgreens’ outside counsel what, if anything  
 7 Walgreens would offer to provide Plaintiff with a compliant employee dispute log. Incredibly,  
 8 Walgreens’ outside counsel remarked, “I don’t believe there are holes in this log,” and made no  
 9 offer. With time short, Plaintiff proposed to Walgreens and now respectfully asks that the Court  
 10 order Walgreens to export and produce in an Excel file all content, including narrative fields, for  
 11 cases tagged to the following claim types identified during the meet and confer: “Wrongful  
 12 Discharge,” “Retaliation,” “Management Practices,” “Compliance,” “Performance Issue,”  
 13 “Company Policy,” “Labor Relations,” Compensation and Benefits,” and “n/a.”<sup>3</sup> Plaintiff would  
 14 then undertake the work of reviewing narrative fields to identify which legal disputes are  
 15 responsive and request a limited number of settlements, civil complaints (if, as is the case in  
 16 certain state court systems, not available online), and demand letters. Plaintiff notes that, on  
 17 December 17, Walgreens stated it would provide the narrative text for the six entries that did  
 18 appear on its log (demonstrating that they were not privileged), but now refuses to do so, claiming  
 19 it did not understand what was in the narrative fields when it made the offer. Walgreens could  
 20 produce the material subject to the protective order and with the opportunity to claw back under  
 21 FRE 502(d) any content it later contends is privileged (though it has not identified any such  
 22 content to date and basic factual summaries are not privileged). The process would be analogous  
 23 to that employed to address Walgreens’ failure to cooperate in producing content from its internal  
 24 complaint database. *See* Doc. 691 at 1-2 (ordering Walgreens to produce all “incident report  
 25 summaries” for Plaintiff’s chosen categories).

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 28 <sup>3</sup> Plaintiff has confirmed from the publicly available software manual for Walgreens’ database  
 software that an Excel export is possible.

1           Shortly before the report drafts were to be exchanged, Walgreens made an unduly narrow  
 2 proposal that, among other things: (1) would cover just two of the many potentially responsive  
 3 “claim type” categories; (2) would exclude many responsive fields, including, e.g., non-privileged  
 4 information from the narratives, outcome, resolution type, and resolution amount; (3) would deny  
 5 Plaintiff access to any non-public documents, including settlement agreements; and, most  
 6 surprisingly, (4) would be limited to incidents within California, despite the Court’s repeated  
 7 rulings recognizing the relevance of nationwide disputes. *See* 11/17/21 Hr’g Tr. 12:16-19  
 8 (“Seems to me nationwide is appropriate. Walgreens kind of unilaterally limited it to California. I  
 9 don’t believe that’s an appropriate cutoff.”); 10/19/21 Hr’g Tr. 34:18-19 (“Nationwide.  
 10 Nationwide. I already said it’s relevant nationwide.”).

### 11           ***Settlement Agreements***

12           On December 22, Plaintiff requested that Walgreens produce any settlement agreements  
 13 related to five matters (three contained on Walgreens’ dispute log and two identified from  
 14 Plaintiff’s independent research that should have appeared on the log). On January 4, Walgreens  
 15 declined to produce the settlement agreements. Plaintiff requests that the Court order Walgreens  
 16 to produce these settlement agreements, which are responsive to the same discovery request as the  
 17 log. That request sought “all documents . . . from any litigation . . . regarding the dispensing . . .  
 18 of Opioids or Cocktail Drugs.” Walgreens cannot reasonably deny that the settlement agreements  
 19 are responsive, and there is no burden. Walgreens’ primary rationale for withholding these few  
 20 agreements appears to be that they are unflattering. Respectfully, Walgreens’ Fed. R. Evid. 403  
 21 argument should be raised *in limine* and is not a basis to avoid production pursuant to a protective  
 22 order.

23           Walgreens’ misrepresentation about the first employee legal dispute Plaintiff identified in  
 24 November from Walgreens’ late-produced employee survey underscores the importance of  
 25 receiving these settlement agreements. On November 17, Walgreens’ counsel stated that the  
 26 plaintiff, G.K., “received \$250.00 as a result of the settlement” of her “seemingly meritless  
 27 claims.” Following the last hearing, Walgreens produced the settlement agreement, revealing that  
 28

1 its representation as to the size of the settlement was, to put it mildly, an extreme  
2 misrepresentation.

### 3 **3. Interrogatory Response**

4 In its section, Walgreens asks the Court to compel a further supplement to an interrogatory  
5 response about which the parties had already reached agreement. The dispute relates to an  
6 interrogatory that Plaintiff last answered on September 18, 2020. Plaintiff heard not a peep until  
7 November 4, 2021, more than a year later, when Walgreens asked Plaintiff to supplement. After a  
8 meet and confer with Walgreens' counsel, Mr. Jernudd, Plaintiff agreed to add a list of the  
9 prescribers "whose opioid prescribing the People may identify, mention, discuss or reference at  
10 trial." *See* Dkt. 788 (reflecting the agreement). Plaintiff served the supplement to which the  
11 parties agreed on December 10. Two-and-half weeks later, Walgreens' counsel, Ms. Swift (who  
12 was not involved in the earlier negotiations regarding the scope of the supplement), sent an email  
13 requesting additional information about the prescribers that went far beyond the terms of the  
14 agreement reached weeks earlier. Respectfully, the Court should reject Walgreens' efforts to  
15 compel a supplemental response.

### 16 **4. Dr. Elizabeth Park's Reliance Materials**

17 In Walgreens' section of this report, it incorrectly states that "Plaintiff has not confirmed  
18 whether it has produced all of the information that [Dr.] Park may have reviewed and relied  
19 upon." Plaintiff has confirmed multiple times, as recently as twice on January 5 (at both a  
20 videoconference and in a subsequent email) that it identified and produced all of Dr. Park's  
21 reliance materials, consistent with Fed. R. Civ. P. 26(b)(2)(ii). Plaintiff has asked and does not  
22 understand what else Walgreens is requesting.

### 23 **B. Endo/Par**

#### 24 **1. Endo's Ongoing Production of Documents**

25 On December 30, the Endo defendants produced over three thousand new documents from  
26 the files of both national and regional custodians, and also advised that it would be producing  
27 additional "commitment logs" relating to vendors that worked on Opana and Opana ER from  
28



1 2006 to 2016 that were previously and improperly withheld as privileged communications. Endo  
2 states that it will produce privilege logs related to its December 30 production on Jan 6.

3 On the same day, Endo advised that it had run some form of technology assisted review  
4 (“TAR”) on the more than one million documents it has placed in its Ankura repository for  
5 documents that were identified by running the negotiated search terms but withheld from  
6 production for unspecified reasons. While the repository is extremely difficult to work with, a  
7 cursory review indicates that a significant number of documents are responsive and should have  
8 been produced months and years prior. However, forcing Plaintiff to engage in a document  
9 review of more than one million documents, after the close of discovery and as Plaintiff is also  
10 trying to prepare for trial and complete dozens of expert depositions, is extremely burdensome.  
11 Therefore, it is appropriate that Plaintiff be permitted to use any relevant documents Endo  
12 produces after the close of discovery at trial, but that defendants be barred from doing so.  
13 Plaintiff also reserves the right to seek additional evidentiary sanctions as may be necessary and  
14 appropriate.

## 15 **2. Deposition of Linda Kitlinski**

16 Plaintiff’s counsel have been in contact with Ms. Kitlinski’s counsel and advised what  
17 dates in late January are workable to continue her deposition, but have yet to receive  
18 confirmation. Plaintiff asks that Endo bear any costs associated with the additional days of  
19 presenting Ms. Kitlinski as a witness in the cross-noticed proceedings.

## 20 **3. Evidentiary Stipulation and Rule 30(b)(6) Testimony**

21 The parties have agreed in principle to a number of evidentiary stipulations, including  
22 stipulations relating to the distribution of opioid-related marketing materials. The parties continue  
23 to meet and confer regarding the accuracy and completeness of the exhibits. Defendants also  
24 agreed to produce a Rule 30(b)(6) witness by the first week of February, but have not yet  
25 provided Plaintiff with dates. Plaintiff asks the Court to impose a deadline of January 12 for Endo  
26 to provide a selection of dates before February 9.

1           **C.     Teva/Actavis Defendants**

2           On December 16, 2021, Plaintiff and the Teva/Actavis Defendants reached agreement on  
3 Plaintiff's 30(b)(6) Notice of Deposition, served on October 29, 2021. In the agreement, the  
4 Teva/Actavis Defendants agreed to provide verified written responses for certain topics, designate  
5 the testimony of Amy Gaither for two topics, and enter into a stipulation regarding the  
6 authenticity of certain business records for certain topics by January 28, 2022.

7           **D.     Anda**

8           On December 21, 2021, the Court ordered that "Anda shall meet with Plaintiff's counsel  
9 and demonstrate how to search the produced documents for due diligence documents related to  
10 particular customers." Doc. 863 at 2 (citing Fed. R. Civ. P. 33(d)(1)). This meet and confer is  
11 scheduled for Monday, January 10.

12       **III.   Third Party Discovery**

13           Plaintiff served several third-party subpoenas, including one to RR Donnelley, formerly  
14 Digital Direct, a vendor related to Allergan, on August 10. The parties have engaged in several  
15 discussions to narrow the scope of Plaintiff's requests. However, RR Donnelley has yet to  
16 produce documents requested. Should agreement not be reached by the parties, Plaintiff will  
17 request intervention by the Court.

18           Plaintiff also served a subpoena on the California Department of Justice seeking re-  
19 identification of Defendants' experts Dr. Vanila Singh's and Douglas Tucker's prescriptions from  
20 the CURES database. Plaintiff provided the necessary consumer notice documents to Defendants'  
21 counsel who have accepted service.

22                               **DEFENDANTS' STATEMENT**

23       **I.     Status of Party Discovery**

24           **A.     The Distributor Defendants' Interrogatories.**

25           On January 5, Plaintiff further supplemented its responses to Distributor Defendants'  
26 Interrogatories 19 and 20, in light of a meet-and-confer with Anda and the Court's recent guidance  
27 related to Plaintiff's responses to the Manufacturer Defendants' Interrogatories. The parties have  
28 agreed that if Anda believes there are remaining deficiencies following this additional supplement,

1 the parties will meet-and-confer on January 6, Anda will submit a 3-page statement to Plaintiff by  
 2 January 10, Plaintiff will submit a responsive 3-page statement by January 12, and the combined  
 3 dispute letter will be filed by January 13.

4 **B. Plaintiff's Objection to the Re-Identification of its Prescribers in the CURES**  
 5 **Data.**

6 Since the last joint status update, the Court has issued two orders on this issue. On  
 7 December 20, 2021, the Court ordered the re-identification of the prescribing records of  
 8 Plaintiff's expert Dr. Anna Lembke. Dkt. 856, p. 2. On December 30, 2021, the Court granted  
 9 Walgreens' request that the California Department of Justice ("DOJ") identify 26 non-objecting  
 10 prescribers from the already-produced CURES data. Dkt. 880.

11 On January 3, 2021, in compliance with the Court's order, Walgreens provided DOJ with  
 12 (1) a declaration from Walgreen's counsel stating that the 26 non-objecting prescribers did not  
 13 submit objections to Walgreens and (2) a draft notice letter to the 26 prescribers informing them  
 14 of the Court's December 30, 2021 Order. To date, DOJ has not provided Walgreens with the  
 15 identifying information for the 26 non-objecting prescribers.

16 In the time since Walgreens submitted its request that DOJ identify 26 non-objecting  
 17 prescribers in the CURES database (Dkt. 869), the objection deadline has passed for four  
 18 additional prescribers. Walgreens requests a supplemental order from the Court consistent with its  
 19 December 30 Order, requiring the re-identification of the four additional non-objecting  
 20 prescribers—Guido Gores, Collin Leong, Mark Altchek, and Kenneth Light. Walgreens will  
 21 again provide DOJ with proofs of service, a declaration stating that these prescribers did not  
 22 submit objections to Walgreens, and a draft notice letter to the prescribers.

23 At the last status conference, Plaintiff represented that it was not opposed to the re-  
 24 identification of some number of Plaintiff's own prescribers, and the Court indicated that a  
 25 reasonable number would be the list of prescribers who are witnesses in the case. *See* 12/20/21  
 26 Hr'g Tr. 29:23-25; *id.* 31:17-20. Subsequently, Walgreens asked Plaintiff to identify each  
 27 prescriber who Plaintiff may call at trial, and to confirm that Plaintiff does not object to re-  
 28 identification of those witnesses' CURES data. *See* Swift to Budner Email, December 23, 2021.

Walgreens also asked Plaintiff to confirm that it does not object to the re-identification of CURES data for a specific list of 30 Plaintiff prescribers who have either been deposed in this case or disclosed in Plaintiff's discovery responses. *See id.* Plaintiff responded that it does not object to the re-identification of these prescribers. See Levin-Gesundheit to Swift Email, January 4, 2022. At Plaintiff's request, Walgreens will provide Plaintiff with consumer notice for 14 of these prescribers who are employed by Plaintiff and allow each prescriber ten days to object.

Plaintiff has refused Walgreens' request that it identify any other Plaintiff-employed prescribers that Plaintiff may call as witnesses at trial. Walgreens therefore asks the Court to instruct Plaintiff to provide a response, so that Walgreens can proceed with its efforts to re-identify Plaintiff's prescriber data, particularly for any witnesses in this case.

Finally, DOJ has refused to re-identify Dr. Lembke's CURES data despite the Court's December 20, 2021 Order because "it Orders *Plaintiff* to re-identify Dr. Anna Lembke in the CURES data." *See* Wurster to Levin Email, December 31, 2021 (emphasis added). "DOJ is not the Plaintiff in this matter and DOJ has not been ordered to re-identify CURES data for Dr. Anna Lembke . . . ." *See id.* Therefore, Walgreens requests that the Court issue a revised Order instructing DOJ to comply with the Court's Order, given that DOJ (and not Plaintiff) maintains the CURES database.

### C. Walgreens' Interrogatory No. 4 (First Set)

On December 10, 2021, Plaintiff served a supplemental response to Walgreens' Interrogatory No. 4 (First Set). Interrogatory No. 4 asked Plaintiff to "Identify each instance when a Person in the City and County of San Francisco was suspected or alleged to have been involved in the improper prescribing or improper or excessive dispensing, unlawful sale, or other suspected wrongdoing related to Prescription Opioids or the submission to a distributor of a Suspicious Order. For each instance, identify (a) the date of the suspected or alleged conduct; (b) the Person involved, (c) the nature of her or his involvement, and (d) the Prescription Opioid(s) involved."

Plaintiff's supplemental response identified 42 additional prescribers "whose opioid prescribing the People may identify, mention, discuss or reference at trial." Plaintiff's response does not identify the nature of the suspected or alleged wrongdoing for any of these prescribers, nor does it provide the date of the alleged conduct or the prescription opioids involved. On December 28, 2021, Walgreens asked Plaintiff to provide this information, and to supplement Plaintiff's document production with documents related to these prescribers that are responsive to Walgreens' document requests.<sup>4</sup> *See* Swift to Budner Email, December 28, 2021. Plaintiff refused to do so. *See* Budner to Swift Email, January 2, 2022. Walgreens therefore requests that the Court order Plaintiff to supplement its response to Walgreens' Interrogatory No. 4 (First Set) by (1) identifying the nature of the suspected or alleged wrongdoing for these 42 named prescribers, (2) providing the date of the alleged conduct, and (3) identifying the prescription opioids involved. Walgreens further requests that the Court order Plaintiff to supplement its document production with documents related to these prescribers.

Plaintiff claims that Walgreens agreed to limit Plaintiff's supplemental response to include a list of 42 prescriber names (and no more). But that is not what Walgreens agreed to. Plaintiff relies on a single paragraph in the November 23, 2021 Joint Status Update in support of its argument: "By December 10, Plaintiff agreed to supplement its response to Walgreens' Interrogatory No. 4 (First Set). Walgreens has asked Plaintiff that, to the extent it plans to 'identify, mention, discuss, or reference any other prescribers at trial in relation to their prescribing or any suspected wrongdoing related to prescription opioids, please supplement [its] response to include them.'" (Dkt. 788, p. 5:7-12). But this language does not reflect an agreement limited to identifying prescribers as Plaintiff now claims; instead, it reflects an agreement to supplement the response to include the information requested in Interrogatory No. 4 with respect

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<sup>4</sup> *See, e.g.*, Walgreens' Request for Production No. 3 (First Set) (seeking all documents related to any alleged illegal or wrongful conduct by a medical doctor); Walgreens' Request for Production No. 4 (Third Set) (seeking all assessments of compliance with laws and professional standards regarding dispensing of controlled substances for each pharmacy or healthcare provider affiliated with Plaintiff); Walgreens' Request for Production No. 5 (Third Set) (seeking all documents related to government actions potentially affecting Plaintiff's employees' licenses and registrations to prescribe or dispense certain prescription medications); Walgreens' Request for Production No. 9 (Third Set) (seeking all documents that refer to diversion of prescription opioids or illicit opioids).

1 to the prescribers that Plaintiff plans on identifying at trial related to prescribing or any suspected  
2 wrongdoing related to opioids.

3 **D. Elizabeth Park's Reliance Materials**

4 Plaintiff's pharmacy expert Elizabeth Park did not provide any supporting materials with  
5 her expert report showing what she reviewed or relied upon with respect to a set of 2,300  
6 Walgreens prescriptions that she discussed in her report. Plaintiff provided a partial response to  
7 Walgreens' request for those materials, identifying materials previously produced in response to a  
8 request for missing materials supporting another expert's report. *See* Levin-Gesundheit to Swift  
9 Email, January 3, 2022. But Plaintiff has not confirmed whether it has produced all of the  
10 information that Ms. Park may have reviewed and relied upon. Walgreens requests an order  
11 instructing Plaintiff to either provide that confirmation or produce any missing reliance materials  
12 supporting Ms. Park's opinions immediately.

13 **E. Plaintiff's Discovery Requests.**

14 Defendants have produced millions of documents in the MDL, which are deemed  
15 produced in this case, and have made major additional productions specific to this case.

16 **Walgreens** has complied with all the Court's instructions and requests at the last  
17 conference. On October 20, Walgreens provided Plaintiff with a list of all predicate categories of  
18 incident reports. The same day, Plaintiff provided a list of all predicate categories for which it  
19 wanted summaries of incident reports produced on a nationwide basis. Within 5 business days, on  
20 October 27, Walgreens produced the summary spreadsheet to Plaintiff. Walgreens reserved all  
21 rights related to the production, as the Court permitted at the October 19 status conference.

22 Plaintiff subsequently asked Walgreens to produce the full APIS files, as well as any  
23 related Salesforce documents, from five separate tranches of incidents. Walgreens produced  
24 these documents. Walgreens also agreed to produce a sixth tranche of documents from the APIS  
25 database, based on Plaintiff's agreement that it would be the last of such requests. Plaintiff sent  
26 that request on December 10, and Walgreens produced the sixth tranche on December 23.  
27 Nevertheless, Plaintiff makes three unfounded complaints regarding Walgreens in its section of  
28 this joint status report. Walgreens responds to each of them here.

**1. Walgreens Has Timely Provided Dates for the Rescheduled Inspection of Its Pharmacy Software System.**

As explained in a December 22, 2021 submission to the Court, Dkt. 873, the Walgreens employee who had been scheduled and prepared to operate Walgreen’s system during the inspection (Cheryl Creek, Walgreens’ Director of Pharmacy Systems) alerted counsel late in the day on December 21, 2021 that she had a family emergency preventing her from conducting the inspection as planned. Walgreens contacted Plaintiff shortly after learning of Ms. Creek’s emergency to reschedule.

Given the crowded schedule in early January, Walgreens has offered January 20, 2022 for the rescheduled inspection. In the alternative, Walgreens can offer January 19, 2022 for the inspection. Plaintiff does not claim that the offered dates present a conflict; instead, Plaintiff demands an earlier inspection date without explanation.

In addition, Plaintiff also incorrectly claims that Walgreens cannot create a “meaningful prescription history” in the test system. That is incorrect. While Walgreens cannot enter in prescriptions with a date earlier than the present (as that would involve improperly back-dating prescriptions), Walgreens has offered to enter prescriptions into the test system prior to the scheduled inspection date, which will allow Plaintiff to observe time-related alerts and drug interaction alerts (contrary to Plaintiff’s claim). Walgreens and Plaintiff have already agreed to the specific test patients and test prescriptions to be entered into the system in advance. Therefore, there is no “issue” regarding observing prescription history as Plaintiff suggests.

**2. Walgreens has complied with the Court’s order to produce an employee dispute log.**

Walgreens has complied with the Court’s order to produce a “a log of employee legal disputes documenting claims that Walgreens took adverse employment actions against pharmacists relating to their prescription due diligence.” Walgreens has also been more than responsive to each of Plaintiff’s requests. Walgreens produced a log containing entries that had been designated “Rx P Claim” because that is the only way in which Walgreens’ database classifies matters as related to pharmacy practice. Plaintiff emphasizes that Walgreens’ initial log



1 excluded three relevant cases that it subsequently identified, but Plaintiff ignores that Walgreens  
2 has answered each of Plaintiff's questions related to these cases—providing information about  
3 how they were classified in Walgreens' system.

4 On January 4, Walgreens made David Metz, an in-house employment lawyer, available  
5 for a meet and confer with Plaintiff. The meeting lasted over an hour and Mr. Metz answered  
6 every question posed by Plaintiff, including listing the fields maintained in Walgreens' database  
7 and each claim type used to classify a matter. Mr. Metz also searched for matters that Plaintiff  
8 requested on the fly and explained how each one is classified in Walgreens' system.

9 Plaintiff mischaracterizes Mr. Metz's statements made during the meet and confer. Mr.  
10 Metz did not identify "Management Practices," "Compliance," "Performance Issue," "Company  
11 Policy," "Labor Relations," "Compensation and Benefits," and "N/A" as potentially relevant  
12 fields. Instead, he mentioned the majority of those classifications only in response to Plaintiff's  
13 request that he list every single classification available in Walgreens' database. As Plaintiff  
14 acknowledges, Mr. Metz identified "wrongful discharge" and "retaliation" as the claim types  
15 most likely to be relevant.

16 Consistent with Mr. Metz's statements, Walgreen made a proposal that would allow  
17 Plaintiff to propose search terms to be used to search the narrative field of matters classified as  
18 "retaliation" or "wrongful discharge." Plaintiff would propose a limited number (5 or fewer) of  
19 search terms that Walgreens would use to search its narrative fields. Walgreens would then  
20 review the matters that hit on search terms for potentially responsive administrative claims and  
21 lawsuits classified as "retaliation" or "wrongful discharge" within the state of California, and  
22 produce those that are responsive. Walgreens' production would include the categories used to  
23 summarize a matter at the time of entry into the system and would not include fields like the  
24 narrative field, which—as Plaintiff's counsel acknowledged during the meet and confer—are  
25 privileged.

26 Plaintiff's claim that Walgreens' proposal is "unduly narrow" is unfounded. Plaintiff  
27 states that focusing on wrongful discharge and retaliation claims is insufficient, but this ignores  
28 that each matter Plaintiff has asked about was classified under either or both of these categories.



1 Plaintiff also states that Walgreens' proposal would exclude many non-privileged fields such as  
 2 the narrative field, but the narrative fields are privileged. They are drafted by the attorneys  
 3 handling a given matter to document legal strategy, mental impressions, and other attorney notes  
 4 regarding the case. Mr. Metz explained this during the meet and confer, and Plaintiff's counsel  
 5 stated that he understood and that Plaintiff was not seeking privileged information.<sup>5</sup> Plaintiff's  
 6 proposal, in contrast, would require Walgreens to produce an array of privileged information not  
 7 relevant to Plaintiff's claims.<sup>6</sup>

8 Walgreens' proposal exceeds what is proportional to the needs of the case, particularly  
 9 given how late we are in discovery, the burden of reviewing a database that was not set up for this  
 10 purpose, and the limited relevance of the underlying information. Nonetheless, to put this matter  
 11 to rest, and in exchange for Plaintiff's agreement not to seek additional information about  
 12 employee disputes, Walgreens agreed to undertake this additional work, and asks the Court to  
 13 order that no more is required.

14 **3. There is no basis for Plaintiff's belated request for settlement**  
 15 **agreements between Walgreens and its former employees.**

16 Plaintiff has requested that Walgreens produce five settlement agreements between  
 17 Walgreens and its former employees. There is no basis for this request as Plaintiff did not seek  
 18 such documents during fact discovery. Plaintiff cites to Request No. 8, which seeks "Copies of  
 19 all documents and discovery, including sworn statements, testimony, video-taped testimony,  
 20 written discovery responses, expert reports, and any accompanying documents, from any  
 21 litigation, mediation, government investigation, government hearing, or arbitration regarding the  
 22 marketing, sales, dispensing, or distribution of Opioids or Cocktail Drugs." Plaintiff's Request  
 23 for Production No. 8 (First Set). This Request does not ask for settlement agreements in claims

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24 <sup>5</sup> Walgreens' counsel had previously agreed to produce the narrative field before learning that this  
 25 field was drafted by lawyers working on the cases and included strategy, notes, and mental  
 26 impressions about each case. Walgreens' agreement also concerned its initial production of six  
 27 matters and not the much more extensive production that Plaintiff now seeks.

28 <sup>6</sup> Plaintiff asserts that its proposal is analogous to the process used in Walgreens' production of its  
 internal complaint database, but unlike the employee dispute log, which is created and maintained  
 by and for Walgreens in-house attorneys, the internal complaint database rarely includes  
 privileged narratives by Walgreens' in-house attorneys. And Walgreens redacted the privileged  
 content before production.

brought by employees or otherwise. Furthermore, Walgreens objected on multiple grounds and agreed “to produce only its document production, deposition transcripts, and expert reports” from the MDL subject to its objections. Walgreens’ Response to Plaintiff’s Request for Production No. 8 (First Set). Plaintiff never asked Walgreens to supplement this response nor did it move to compel production of employee settlement agreements based on this request. Settlement agreements in these unrelated cases are also of limited, if any, relevance and would be inadmissible at trial under Rule 403 in any event, as any probative value is substantially outweighed by the danger of confusing the issues and wasting time.

#### 4. Walgreens’ 30(b)(6) Depositions

Plaintiff refers to Topic 10, which relates to document authentication and admissibility. Plaintiff acknowledges that it is in the process of compiling a list of documents to provide to Walgreens on this topic. Once received, Walgreens will review and respond to the list.

As reported in the parties’ past Joint Status Updates, **Endo and Par** continue to assess historical pre-MDL and MDL productions, including in connection with (1) an on-going special master process in another federal case remanded from the MDL, *City of Chicago v. Purdue Pharma, L.P. et al.*, No. 1:14-cv-04361 (N.D. Ill.), where Endo is a defendant, and (2) the administration of the document repositories that Endo and Par established where plaintiffs can view documents determined to be non-responsive to discovery requests in opioid litigation. In connection with that work, on December 30, 2021, Endo and Par provided an update to Plaintiff and others and made certain supplemental document productions. Endo and Par will promptly notify Plaintiff if they determine that any further supplementation is necessary.<sup>7</sup>

Endo and Par disagree with Plaintiff’s assertions, and the inferences Plaintiff draws, concerning Endo’s and Par’s December 30 productions and the documents in the Ankura repositories. Plaintiff’s requests for relief are premature and not properly before the Court.

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<sup>7</sup> Endo’s and Par’s productions in other opioid matters will continue notwithstanding the close of fact discovery in this case.

1 Endo is working diligently to identify a deponent to testify concerned the agreed Rule  
 2 30(b)(6) deposition topics and will provide Plaintiff with possible dates for that deposition no  
 3 later than January 14, 2022.

4 **F. Plaintiff's Request for Admissibility and Authentication Stipulations.**

5 During the meet-and-confer on this topic, Plaintiff made a very broad proposal that  
 6 seemed to ask Defendants to stipulate to a huge universe of documents as both authentic and  
 7 admissible as business records. Plaintiff provided a revised proposal in writing on October 29,  
 8 2021. To better understand and consider Plaintiff's proposal, which remains very broad,  
 9 Defendants wrote back on November 12, 2021, with a series of questions. Plaintiff has not yet  
 10 responded to the questions in Defendants' letter. Defendants remain willing to continue to meet  
 11 and confer on this topic, but Defendants continue to believe that any such discussion will be more  
 12 focused and productive once the parties identify exhibits for trial.

13  
 14 DATED: January 6, 2022

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DATED: January 6, 2022

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<sup>8</sup> Defendant Allergan Finance, LLC was formerly known as Actavis, Inc., which was formerly known as Watson Pharmaceuticals, Inc. Defendant Allergan plc, which was formerly known as Actavis plc and is now known as Allergan Limited, does not waive but rather expressly preserves its objection to the Court's personal jurisdiction over it.

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**ATTESTATION**

Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from the above signatories.

Dated: January 6, 2022

By: /s/ Kevin R. Budner

**CERTIFICATE OF SERVICE**

I hereby certify that, on January 6, 2022, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

/s/ Kevin R. Budner  
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